

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

REAL CHANGE, a Washington non-profit
corporation; SHARE, a Washington
non-profit corporation; WHEEL, an
unincorporated association;
NICKELSVILLE, an unincorporated
association; TIM HARRIS, an
individual; JARVIS CAPUCION, an
individual; and TRACEY DEGARMO, an
individual;

Plaintiffs,

v.

THE CITY OF SEATTLE and SEATTLE
PARKS AND RECREATION, a Washington
Municipal corporation;
CHRISTOPHER WILLIAMS, in his
individual and official capacity;
and, JEFF HODGES, in his individual
and official capacity;

Defendants.

No. 2:12-cv-681

DECLARATION OF
BRADEN PENCE

BRADEN PENCE, under penalty of perjury, declares as follows:

1. I am over 18 years of age.
2. I am the Plaintiffs' attorney in this matter.

- 1 3. On knowledge and belief, Christopher Williams is the acting Superintendent of Seattle
2 Parks and Recreation.
- 3 4. On knowledge and belief, Jeff Hodges is the acting manager of parks scheduling and
4 the senior events scheduler for Seattle Parks and Rec.
- 5 5. On knowledge and belief, Seattle Parks and Recreation is an agency of the City of
6 Seattle responsible for public parks within the city.
- 7 6. On knowledge and belief, Seattle Parks and Recreation, and its employees, are
8 governed by the Seattle Municipal Code (SMC), specifically Chapter 18.12.
- 9 7. Attached to this declaration as Exhibit 1 is a true and accurate copy of SMC 18.12.040,
10 as captured from the City of Seattle's website on 4/18/12.
- 11 8. Attached to this declaration as Exhibit 2 is a true and accurate copy of SMC 18.12.044,
12 as captured from the City of Seattle's website on 4/18/12.
- 13 9. SMC 18.12 in its entirety is available at the following internet address:
14 <http://clerk.ci.seattle.wa.us/~public/toc/t18.htm>
- 15 10. On knowledge and belief based upon statements made to me by Jeff Hodges and on a
16 copy of a permit posted on the City's website, Defendants have waived permitting fees
17 in the past. For example, Defendants did waived all permitting and electrical fees
18 associated with the 2011-12 DSA permit for the carousel.
- 19 11. Jeff Hodges made this statement to me during the April 16 appeal meeting at Seattle
20 Parks and Recreation headquarter. I asked him why the City would waive fees for DSA
21 but not for other applicants. He said that DSA was in a "partnership" with the Parks
22 department.
- 23 12. Attached to this declaration as Exhibit 3 are true and accurate copies of six (6)
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1 photographs I took on the evening of Monday, April 16, 2012 in Westlake Park
2 between 10:30 and 10:33 p.m. The photographs include a date/time stamp that
3 accurately reflects the date and time at which I took the photos.

4 13. The photos show approximately one dozen individual using the park in a variety of
5 ways.

6 14. These individuals photographed did not appear to be passing through the park, but
7 rather using the park: standing, sitting, sleeping, talking, and otherwise remaining
8 within in the park.

9 15. I did not consider other individuals who appeared to be passing through the park to be
10 using it. I also did not consider individuals on the sidewalk around the park to be using
11 it.

12 16. On knowledge and belief, 10:30 p.m. is approximately 30 minutes after Westlake's
13 official closing time.

14 17. I did not observe any threats to human health or safety, nor any obstruction of business
15 activities, residential uses, or other interferences caused by individuals in the park.

16 18. I did not observe any officials attempting to clear the park or otherwise enforce the
17 10:00 p.m. curfew.

18 19. I attended the April 16 meeting at Seattle Parks and Recreation headquarters to
19 represent my clients, the Plaintiffs. The meeting was called by Defendants as part of
20 the appeal of their denial of the permit.

21 20. At the beginning of the meeting, unprompted and with a full opportunity to express
22 himself, Superintendent Williams only indicated that he would not permit Plaintiffs'
23 event to go over night or include more than three or four "symbolic" tents because of
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concerns for “consistency” and in order to maintain the unrelated prosecutions of Occupy Seattle protesters who were challenging arrests for setting up tents at Westlake.

21. Superintendent did not at that point, or at any point throughout or before that meeting ever indicate that the denial of the permit was a result of any other concern.

22. Later in the meeting, Mr. Gary Smith, legal counsel for the City, indicated that the denial was also motivated by concerns for “health and safety.” He did not elaborate.

23. At that point, Plaintiff Jarvis Capucion, also in attendance, noted that if the permit was not granted the demonstrators would probably end up camping on the sidewalks outside the Norstrom retail store, which is less-safe than camping in Westlake.

24. On knowledge and belief, the businesses around Westlake close for the night at or before 10:00 p.m. and do not reopen until at or after 6:00 a.m.

25. On knowledge and belief, the annual DSA permit allows the use of Westlake that impedes other uses of the park by the public in significant ways, including the placement of several large tents, a large mechanical carousel, a picket fence, a solid structure shed, and other accoutrement. These structures are in place for a period of approximately five weeks.

26. A true and accurate copy of Westlake Park Management Review Task Force is attached to this declaration as Exhibit 4.

27. On knowledge and belief, Defendants issued permits for both Target Corporation and DSA for events at Westlake, which apparently allowed the placement of large banners that included corporate logos and messages.

28. During Occupy Seattle events at Westlake, I observed Parks and Recreation employees tearing down and discarding signs containing expressly political messages and artwork.

29. A true and accurate copy of Rose Landberg's certification regarding the accuracy of her transcripts of defense attorney David Trieleier's interview of Brock Milliern and Defendant Jeff Hodges is attached to this declaration as Exhibit 5. The interviews occurred in the course of the criminal prosecution of an Occupy Seattle protester charged in relation to the use of a tent in Westlake in October, 2011.

30. A true and accurate copy of Rose Landberg's transcript of the Brock Milliern interview is attached to this declaration as Exhibit 6.

31. A true and accurate copy of Rose Landberg's transcript of the Jeff Hodges interview is attached to this declaration as Exhibit 7.

32. On knowledge and belief, attorney Trieleier also conducted a recorded interviewed Defendant Christopher Wililams, but at time of filing no transcript was available.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Signed this 19th day of April, 2012, at Seattle, Washington.

/S/Braden Pence
Braden Pence #43495
Attorney for Plaintiffs